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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-173

BOARD OF DIRECTORS AND OFFICERS, FORBES FEDERAL CREDIT UNION, CHARTER NO. 11258, FORBES AIR FORCE BASE, TOPEKA, KANSAS, PETITIONERS

v.

NATIONAL CREDIT UNION ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A13) is reported at 477 F.2d 777.

JURISDICTION

The judgment of the court of appeals was entered on April 26, 1973. The petition for a writ of certiorari was filed on July 25, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the National Credit Union Administration acted within the scope of its supervisory authority under the Federal Credit Union Act in directing petitioners to limit the membership of their credit union to persons who actually receive benefits or services from Forbes Air Force Base in Topeka, Kansas.

STATUTES INVOLVED

The relevant portions of the Federal Credit Union Act, 48 Stat. 1216, *et seq.*, as amended, 12 U.S.C. 1751, *et seq.*, are set forth in an Appendix, *infra*, pp. 13–15.

STATEMENT

Petitioners are the board of directors and officers of Forbes Federal Credit Union, located in Topeka, Kansas. They brought this action in the court of appeals to overturn an order of the National Credit Union Administration,[1] directing them to cease and desist from providing credit union services to persons who do not actually receive benefits or services from nearby Forbes Air Force Base. Petitioners contend that the Administration's order is based on an incorrect interpretation of the provision in Forbes' charter which establishes the qualifications for credit union membership.

1. The Federal Credit Union Act, 12 U.S.C. 1751, *et seq.*, gives the Administration broad regulatory powers over federal credit unions. The Administration must investigate and pass on each proposal for a new federal credit union (12 U.S.C. 1754). It must

[1] The Administration's predecessor, the Bureau of Federal Credit Unions, administered the Act from 1953 to 1970.

approve, for each new credit union, an organization certificate stating, among other things, "the location of the proposed Federal credit union and the territory in which it will operate" and "the proposed field of membership, specified in detail" (12 U.S.C. 1753(2), (5)).

The qualifications of members of federal credit unions are specifically subject to regulation. Section 1759 of the Act provides that membership shall consist of "the incorporators and such other persons * * * to the extent permitted by rules and regulations prescribed by the Administrator * * * ; except that federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district."

The Administration, in its official publications, has developed general administrative standards to define the "common bond" requirement of the Act (see Ct. App. A, I, pp. 15, 180).[2] Consistent with these standards, the Administration has long limited the membership of federal credit unions at military installations to persons who actually receive some benefits or services from the particular installation where the credit union is located (see Ct. App. A, I, pp. 88–124).

The Department of Defense in January 1967 requested the Administration to permit military personnel who were "geographically separated" from their parent organization to join federal credit unions at

[2] "Ct. App. A" refers to the two volume appendix in the court of appeals. "Tab" designates the indexed portions of the certified record in the court of appeals.

the local military installation where they were receiving normal services, such as commissary and exchange services.[3] The Administration agreed. It announced in its April 1967 Bulletin to the federal credit union industry (Ct. App. A, I, p. 4; see Pet. App. A3) that credit unions affiliated with the Defense Department could thereafter amend their charter to extend services to:

> Members of the U.S. Armed Forces, active or retired, or their dependent survivors who are eligible by law or regulations to receive benefits or services from the above military installation * * *.

The Bulletin explained the basis for this charter amendment provision (hereinafter referred to as "the 1967 Amendment") as follows (Ct. App. A, I, p. 4; see Pet. App. A23–A24):

> Military personnel and their dependents who regularly use the services and facilities of an installation become a part of the military community of that base and have a common bond with the basic group that forms the field of membership of the credit union at that location.

The Administration thereafter received inquiries whether the 1967 Amendment permitted a military credit union to offer membership to any and all mili-

[3] The Defense Department wrote the Administration:

"* * * In order to correct this situation, [we] request your consideration of an amendment to [Administration] regulations which would permit a member of the armed services, either active or retired or his legal survivors, to become a member of a credit union located on the military installation which provides other services to that member or survivor. * * *" (Tab 37, Exh. G–3; see Pet. App. A4.)

tary personnel, regardless of whether they actually *received* any benefits or services from the local military base. The inquiries stemmed from the fact that all military personnel, wherever they are located geographically, are theoretically "eligible" to receive benefits and services from any military installation, even though they may never do so.

In response to these inquiries, the Administration in June 1967 issued a memorandum to all of its regional representatives and examiners, stating (Ct. App. A, I, p. 16; see Pet. App. A4):

> The [Administration] interprets the [1967 Amendment] as applying only to those persons who are so situated that they can and in fact do utilize the benefits or services provided by the named installation. This is necessary to assure that the person is a part of the military community of the installation.

The Administration's October 1967 Bulletin advised all Department of Defense affiliated credit unions, including Forbes, of this interpretation (see Pet. App. A4–A5). In 1968, the Administration amended the text of the 1967 Amendment so that charters approved thereafter would permit extension of services to

> [m]embers of the U.S. Armed Forces, active or retired, or their dependents or dependent survivors who are eligible by law or regulations to receive *and are receiving* benefits or services from the above military installation. [Ct. App. A, I, p. 25 (emphasis added); see Pet. App. A5.]

The italicized addition reaffirmed the Administration's prior interpretation of the Amendment. Prior to the